No. 91-1353

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY,

Petitioner,

v.

WALTER S. ANISKOFF, JR., *et al.*,

Respondents.

On Writ of Certiorari to the Supreme Judicial Court of Maine

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether Section 525 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. App. § 525, protects a member of the United States Armed Forces, during military service, from seizure and sale of his real property by a municipal taxing authority for unpaid taxes on that real property levied during the period of military service without a showing of prejudice resulting from that military service.

PARTIES TO THE PROCEEDING

In addition to the captioned parties, the Inhabitants of the Town of Danforth, Maine, and H.C. Haynes, Inc. are also respondents in this case.

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OPINIONS BELOW

The opinion of the Supreme Judicial Court of Maine (Pet. App. 42-46) is reported at 599 A.2d 426 (Me. 1992). The opinion of the Maine Superior Court (Pet. App. 24-41) is unreported.

JURISDICTION

The judgment of the Supreme Judicial Court of Maine was entered on November 27, 1991. The petition for a writ of certiorari was filed on February 20, 1992, and was granted by

this Court on June 22, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTE INVOLVED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 (the "Relief Act"), as amended, 50 U.S.C. App. § 525 ("Section 525"), provides:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.[1]

STATEMENT

Section 525 of the Relief Act provides that "[t]he period of military service shall not be included in computing" any statute of limitations period or "any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." The issue in this

[1]On March 18, 1991, Congress amended Section 525 by replacing a reference to "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942" with the present "October 6, 1942." Soldiers' and Sailors' Civil Relief Act Amendments of 1991, Pub. L. No. 102-12, § 9(6), 105 Stat. 39. This amendment does not affect the question presented here, and petitioner refers throughout this brief to the present version of Section 525.

case is whether, in order to invoke the redemption protection of Section 525, a service member must establish hardship resulting from his military service, even though Section 525 contains no explicit hardship requirement. The Maine Superior Court, answering that question in the affirmative, dismissed quiet title suits against the respondents on the ground that petitioner, a United States Army Colonel, had failed to show that his military service had somehow prevented him from paying his property taxes (Pet. App. 24-41). The Supreme Judicial Court of Maine affirmed by an equally divided court (Pet. App. 42-46).

1. Petitioner, Col. Thomas F. Conroy, was on continuous active duty in the United States Army from 1966 through the date of trial in September, 1990 (Pet. App. 25; J.A. 4). As is common in the military, Col. Conroy's duties required him and his family to relocate more than a dozen times, both within the United States and abroad. Specifically, between November, 1966 and September, 1990, Col. Conroy was stationed at the following locations (Pet. App. 26):

Fort Campbell, Kentucky	Nov. 1966 - Sept. 1967[2]
Republic of Vietnam	Nov. 1967 - Nov. 1968
Eglin AFB, Florida	Dec. 1968 - Oct. 1970
Fort Benning, Georgia	Oct. 1970 - July 1971
Fort Devens, Mass.	Aug. 1971 - June 1973
Boston Army Base, Mass.	June 1973 - June 1975
Fort Leavenworth, Kansas	July 1975 - July 1976
Republic of Korea	Aug. 1976 - Aug. 1977
Fort Devens, Mass.	Sept. 1977 - May 1980
Westover AFB, Mass.	June 1980 - July 1982
Fort Devens, Mass.	Aug. 1982 - Jan. 1986

[2]The trial court's opinion contains a typographical error on the dates applicable to Col. Conroy's tour at Fort Campbell. The correct dates are from November, *1966* (not 1967) through September, 1967. *See* Record on Appeal, Affidavit of Thomas F. Conroy at 1-2, ¶ 5 (Jan. 25, 1988). *Cf.* Pet App. 26.

Rome, Italy	Jan. 1986 - Aug. 1986
Brunssum, Netherlands	Aug. 1986 - trial date[3]

Each time he was reassigned to a new station, Col. Conroy gave notice to the local servicing postal facility, the postal clerk for his unit of assignment, and all of the parties with whom he was doing business (J.A. 11).

2. In May of 1973, Col. Conroy purchased a parcel of land in Danforth, Maine, on which he eventually planned to build "a little cabin . . . [to use] as kind of a get away for the entire family" (J.A. 6). Between 1973 and 1983, Col. Conroy paid all real estate taxes due on his property (which, as of 1983, totaled $140 per year), notwithstanding his numerous transfers and other temporary assignments (Pet. App. 26; J.A. 8, 32). In addition, he consistently notified respondent, the Town of Danforth (the "Town"), of any change of address (J.A. 11).

In 1984 and 1985, however, Col. Conroy did not receive his property tax bills from the Town (Pet. App. 27). He wrote to the Town inquiring about his 1984 bill but received no reply (Pet. App. 27).[4] Upon moving overseas in 1986, Col. Conroy took no further action (Pet. App. 27). The Town sent notices to Col. Conroy regarding his tax bills for 1984, 1985, and 1986, but they were all returned as "undeliverable as addressed and unable to

[3]In addition to changing official duty stations, Col. Conroy was ordered to spend portions of his time elsewhere, as when he spent a good part of 1984 in Beruit, Lebanon (J.A. 12).

[4]The Superior Court erroneously indicated that Col. Conroy's testimony was that he wrote to the Town only in *late* 1985 inquiring about both his 1984 and 1985 bills (Pet. App. 27). Col. Conroy actually testified that he wrote in early 1985 (J.A. 12), and he swore in an affidavit that he wrote in early 1985 and followed up again later that year. Record on Appeal, Affidavit of Thomas F. Conroy at 2, ¶ 9 (Jan. 25, 1988).

forward" (Pet. App. 28).[5] The Town also sent Col. Conroy notices of tax liens and impending automatic foreclosure, which were also returned as undeliverable (Pet. App. 28).

3. Under Maine law, a town may impose a tax lien on property for which taxes are delinquent for eight or more months. Maine Rev. Stat. Ann. tit. 36, §§ 552, 942 (West 1978). After the taxpayer is notified (personally or by mail), the tax collector may record a tax lien certificate in the county land records, creating a tax lien mortgage. *Id.* §§ 942, 943. The taxpayer must redeem the property by paying the delinquent taxes within 18 months, or the tax lien mortgage is automatically foreclosed. *Id.* § 943.

On December 22, 1986, the Town, acting pursuant to the foregoing Maine statutes, sold petitioner's property in two parcels to respondents Walter S. Aniskoff, Jr. ("Aniskoff") and H.C. Haynes, Inc. ("Haynes") (Pet. App. 28). Both sales were in the form of quitclaim deeds.[6]

4. On November 20, 1987, Col. Conroy brought suit in Maine District Court against Aniskoff and the Town to quiet title to the portion of Col. Conroy's land that the Town had quitclaimed to Aniskoff (J.A. 1). On July 15, 1988, Col. Conroy brought a quiet title suit against Haynes in Maine Superior Court

[5]The Superior Court found that the notices were sent to Fort Devens (Pet. App. 27), but Col. Conroy testified that they must have been sent elsewhere (J.A. 11), and the record confirms that they were actually sent to Col. Conroy's previous address, Westover AFB. Record on Appeal, Supplemental Affidavit of Byron Gould at 1, ¶ 1 (July 12, 1988).

[6]Record on Appeal, Pl. Ex. 2, 4 (deeds); *see also* Record on Appeal, Transcript at 10-11 (Sept. 26, 1990) (admitting exhibits). Under Maine law, "a quit claim deed is only effective to convey whatever interest the grantor may have had in the land." *Ricker v. United States*, 417 F. Supp. 133, 140 (D. Me. 1976). *See* Maine Rev. Stat. Ann. tit. 33, § 161 (West 1988).

regarding the other parcel of Col. Conroy's land (J.A. 1).[7] In both complaints, Col. Conroy claimed that Section 525 had prevented the Town from acquiring title to his property. The suit against Aniskoff and the Town was removed by the defendants to the Superior Court, which granted Col. Conroy's motion to consolidate the actions (J.A. 2).

5. The consolidated trial was held on September 26, 1990. At trial, the parties stipulated (Pet. App. 28-29):

> [A]ll the statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and . . . were it not for the Soldiers and Sailors [sic] Civil Relief Act, the Town [sic] title would have been perfected in this particular instance.

On November 6, 1990, the Superior Court rendered an opinion (Pet. App. 24-41) dismissing all claims against respondents on the ground that Section 525 "afford[ed] [Col. Conroy] no relief from the Town's acquisition and subsequent sale of his Danforth, Maine, property" (Pet. App. 41). The court recognized initially that this Court's decision in *LeMaistre v. Leffers*, 333 U.S. 1 (1948), had found that Section 525 constituted an "absolute bar" to the running of limitations periods on behalf of military personnel (Pet. App. 32). *LeMaistre*, the court noted, had been "founded on the general principle of statutory interpretation providing that where the language of a statute is clear, it is to be

[7]Col. Conroy also sought relief against Haynes on the ground that Haynes had willfully and knowingly removed timber from part of Col. Conroy's land, even after being informed by Col. Conroy's attorney that Haynes did not have good title to the land as a result of Section 525 (Pet. App. 43). Herbert Haynes, president of Haynes, admitted at trial that he continued to cut down and remove timber even after his own attorney confirmed that Col. Conroy had a right to redeem the property under Section 525 (J.A. 20-27). The courts below did not reach this issue because of their holding that Section 525 requires a showing of prejudice.

applied according to its plain meaning" (Pet. App. 32-33). The court also acknowledged that many other courts had similarly relied on the plain language of Section 525 to suspend statutes of limitations in cases involving members of the military (Pet. App. 32 (citing numerous cases)).

The court noted, however, that other courts had held that limitations periods may be tolled under Section 525 only "upon a showing that said military service resulted in hardship excusing timely legal action" (Pet. App. 33). The court explained that this contrary line of cases was grounded upon two notions. First, the Relief Act "was only intended to provide relief for one subject to military service by conscription who is called away from civilian life to distant lands and faced with threats of war" (Pet. App. 34). The court noted that *LeMaistre* itself involved wartime service (Pet. App. 36). Second, to allow "career military servicemen not handicapped by their military status" to benefit from Section 525 would be "absurd and illogical" (Pet. App. 34), since those servicemen could then purchase property, ignore their tax responsibilities, and redeem the property years later following the conclusion of military service (Pet. App. 37-39). Choosing to follow this latter line of cases, the court held that Section 525 "will toll the running of a redemption period only where the serviceman can show a hardship caused by active duty in the military" (Pet. App. 40). Finding that Col. Conroy had failed to allege or establish hardship, the court dismissed his lawsuits (Pet. App. 40-41).

6. Col. Conroy timely appealed to the Supreme Judicial Court of Maine.[8] On November 27, 1991, that court affirmed

[8]The Supreme Judicial Court initially remanded the case to the Superior Court because the latter court's order had not dismissed cross-claims and counterclaims that had remained when Col. Conroy's claims were dismissed (J.A. 1). On February 19, 1991, the Superior Court issued an amended judgment and order correcting the error (J.A. 37), and Col. Conroy timely appealed.

the Superior Court's decision by an evenly divided court (Pet. App. 42-46).

SUMMARY OF ARGUMENT

It is well established that when a statute is unambiguous, it is the duty of this Court to apply it as written. *E.g.*, *United States v. Ron Pair Enters. Inc.*, 489 U.S. 235, 241 (1989). In this case Section 525 clearly states that the period of redemption for real property sold for non-payment of taxes is tolled for a service person's period of service. No showing of prejudice is required.

The structure of the Relief Act confirms this plain reading of Section 525 by demonstrating that Congress carefully imposed prejudice requirements where it deemed them important. In contrast to Section 525, many sections of the Relief Act expressly condition relief on a showing of prejudice. *E.g.*, 50 U.S.C. App. § 521 (stay of proceedings involving service person). Other sections of the Act apply *without* a demonstration of prejudice. *E.g.*, 50 U.S.C. App. § 561(1) (rights to federal lands not forfeited). Finally, one section of the Act, Section 560, juxtaposes a provision conditioning relief upon a showing of hardship with one providing relief without any qualification. 50 U.S.C. App. §560 (applying to real property owned and occupied for dwelling, professional, business or agricultural purposes).

Contrary to the decision of the Maine Superior Court, which imposed a prejudice requirement in order to avoid "absurd results," there is no reason to ignore the plain meaning of Section 525. This Court has made clear that a court may not disregard a statute's plain meaning because of concern about "absurd results" unless (i) the statute leads to consequences that are so bizarre that Congress could not possibly have intended them, and (ii) Congress has given a clear indication that the results dictated by a plain reading were not intended. *See, e.g.*, *Demarest v. Manspeaker*, 111 S.Ct. 599, 604 (1991); *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). Neither element is present here.

Section 525 rationally serves Congress' goal of providing protection for service personnel during periods of military service so that they can concentrate on their military duties, and Congress has provided no clear indication that a plain reading of Section 525 is inappropriate. Finally, the difficulties that would arise if this Court attempted to rewrite Section 525 -- such as ascertaining the proper burden of proof -- confirm the wisdom of applying the statute as written.

ARGUMENT

SECTION 525 OF THE RELIEF ACT DOES NOT REQUIRE MILITARY PERSONNEL TO DEMONSTRATE PREJUDICE IN ORDER TO TOLL THE PERIOD FOR REDEMPTION OF REAL PROPERTY SOLD FOR NONPAYMENT OF TAXES

A. By Its Plain Terms, Section 525 Contains No Prejudice Requirement

1. It is fundamental that where "[a] statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The reason for this rule is that there is "no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (citation omitted). When a court adds terms to those drafted by Congress, it "transcends the judicial function," *Iselin v. United States*, 270 U.S. 245, 251 (1926), and undermines the Court's salutary "deference to the supremacy of the Legislature." *United States v. Locke*, 471 U.S. 84, 95 (1985).

Accordingly, when the terms of a statute are unambiguous, this Court will not permit the use of either legislative history or rules of statutory construction to override those terms except in "rare

and exceptional circumstances." *King v. St. Vincent's Hosp.*, 112 S. Ct. 570, 575 n.14 (1991) (citation omitted); *see, e.g., Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 465-466 (1989) (construing statutes to avoid constitutional problems); *United States v. Brown*, 333 U.S. 18, 27 (1948) (avoiding "patently absurd consequences"). As a general rule, "[i]nconvenience or hardships, if any, that result from following the statute as written must be relieved by legislation." *United States v. Missouri Pac. R. Co.*, 278 U.S. 269, 277-278 (1929); *accord, e.g., Estate of Cowart v. Nicklos Drilling Co.*, 112 S. Ct. 2589, 2598 (1992).

The reasons for applying the plain language rule are particularly compelling where the statute accords benefits to military personnel. This Court has long held that, even if such a statute is ambiguous, the ambiguity should be resolved in favor of military personnel. *See, e.g., King*, 112 S. Ct. at 574 n.9; *Alabama Power Co. v. Davis*, 431 U.S. 581, 584-85 (1977); *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). It follows *a fortiori* that a court should not construe such a statute *against* military personnel where that construction conflicts with the statute's plain language.

2. There can be no dispute that Section 525 of the Relief Act, by its terms, imposes no requirement that the service person demonstrate prejudice. That section states, in pertinent part, that "[t]he period of military service shall not be included . . . in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." 50 U.S.C. App. § 525.[9] Section 511(2), in turn, defines "period of military service" as

[9]Likewise, the portion of Section 525 governing statutes of limitation contains no prejudice requirement. *See* 50 U.S.C. App. § 525 ("The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding . . . by or against any person in military service. . . .").

"the period beginning on the date on which the person enters active service and ending on the date of the person's release from active service or death while in active service . . . ." 50 U.S.C. App. 511(2). Congress could not have been clearer: a service member's entire period of military service after October 6, 1942, is excluded from any period provided by law for the redemption of real estate sold for non-payment of taxes.

3. Although numerous courts have applied Section 525, we know of no court that has ever found its language to be ambiguous. Indeed, more than 40 years ago, this Court examined the precise language at issue and found it to be clear and unambiguous. In *LeMaistre v. Leffers*, 333 U.S. 1 (1948), this Court rejected arguments attempting to limit Section 525, contrary to its terms, to cases involving (i) passage of title prior to redemption and (ii) land owned or occupied for dwelling, professional, business, or agricultural purposes. The Court reasoned that it could not accept those arguments "without drastically contracting the language of [Section 525] and closing [its] eyes to [the statute's] beneficent purpose." 333 U.S. at 6. In the course of its decision, the Court specifically noted that Section 525 tolled the period of redemption for petitioner "as long as he was in the military service." *Id.* at 3.[10]

Since *LeMaistre*, numerous courts have squarely addressed whether Section 525 imposes a prejudice requirement and have concluded, based on the statute's plain language, that no such requirement exists. *See, e.g., Mason v. Texaco, Inc.*, 862 F.2d 242, 245 (10th Cir. 1988); *Ricard v. Birch*, 529 F.2d 214, 217

[10]The Court also noted that the statute "must be read with an eye friendly to those who dropped their affairs to answer their country's call." *LeMaistre*, 333 U.S. at 6. Relying on that language, the Maine Superior Court distinguished the case on the ground that it involved a serviceman who served for only three years during World War II (Pet. App. 35-36). *LeMaistre*, however, was premised not on that fact but on the language of the statute. And, as noted on page 21, *infra*, Section 525 was extended to apply during peacetime.

(4th Cir. 1985); *Ray v. Porter*, 464 F.2d 452, 455-56 (6th Cir. 1972); *McCance v. Lindau*, 492 A.2d 1352, 1356 (Md. Ct. Spec. App. 1985); *Jones v. Garrett*, 386 P.2d 194, 200 (Kan. 1963); *see also Illinois Nat'l Bank of Springfield v. Gwinn*, 61 N.E.2d 249, 254 (Ill. 1945) (predating *LeMaistre*). Even those courts that have required hardship under Section 525 have not identified any ambiguity but instead have imposed such a requirement despite the statutory language (*see* Pet. App. 33-40 (discussing cases)). In short, there is no basis for finding any ambiguity in Section 525.

B. Other Provisions of the Relief Act Confirm that Congress' Failure to Include a Prejudice Requirement in Section 525 Was Deliberate

Standing alone, Section 525 unambiguously affords relief without requiring the service member to demonstrate hardship. This reading of Section 525 is confirmed by examining the other parts of the Relief Act.

It is a basic rule of statutory construction that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation omitted); *accord, e.g., General Motors Corp. v. United States*, 496 U.S. 530, 537-38 (1990); *Yellow Freight System, Inc. v. Donnelly*, 494 U.S. 820, 824-25 (1990). Applying this principle here, it is clear that Congress' failure to require prejudice in Section 525 was deliberate.

First, in contrast to Section 525, many sections of the Relief Act expressly condition relief on a showing of hardship. Some provisions require the military person to demonstrate that his ability to fulfill an obligation was prejudiced by reason of his military service. For instance, Section 520 provides that upon application by a service member (or his legal representative), a

court may reopen a judgment entered against the service member during the period of service if "it appears that such person was prejudiced by reason of his military service in making his defense thereto." 50 U.S.C. App. § 520(4).[11] Other provisions of the Relief Act appear to create a rebuttable presumption that the service member is entitled to relief. For example, Section 532 provides for a stay of proceedings to enforce various secured obligations unless the ability of the service member to meet the obligation "is not materially affected by reason of his military service." 50 U.S.C. App. § 532(2).[12] These sections demonstrate that Congress knew how to impose a prejudice requirement when it so intended.[13]

Second, like Section 525, numerous other sections of the Relief Act apply *without* a showing of hardship or prejudice. For

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[11] Additional sections applying that standard of prejudice include: 50 U.S.C. App. § 522 (relief against enforcement of fine or penalty for noncompliance with terms of contract); *id.* § 573 (deferral of income tax collection).

[12] Additional sections applying that standard of prejudice include: 50 U.S.C. App. § 521 (stay of proceedings involving service person either as plaintiff or as defendant); *id.* § 523 (staying judgment, garnishment, or attachment against service member); *id.* § 526 (capping interest rates on obligations or liabilities entered prior to military service); *id.* § 530(2) (staying eviction or distress proceedings against dependents of military personnel); *id.* § 531(3) (staying proceedings to rescind or terminate installment contract or to resume possession of property for nonpayment of installment or for any other breach of terms of agreement); *id.* § 535(2) (limiting foreclosure or enforcement of lien for storage of personal property); *id.* § 536 (extending benefits of Sections 530-536 to dependents of service members unless dependents are not prejudiced); *id.* § 590 (staying enforcement of obligations, liabilities, and taxes).

[13] Two of the cases relied upon by the Maine Superior Court (Pet. App. 33-40) viewed Congress' imposition of prejudice requirements in other sections of the Relief Act as proof that the Act is "bottomed" on a concern for prejudice, allowing the courts to *infer* a similar prejudice requirement in Section 525. *Bailey v. Barranca*, 488 P.2d 725, 729 (N.M. 1971); *King v. Zagorski*, 207 So. 2d 61, 65 (Fla. Dist. Ct. App. 1968). These cases, of course, have turned principles of statutory construction on their head.

example, Section 574 protects military personnel from potential multiple state taxation of income or personal property by providing that the military person's domiciliary state is the only state that may impose such taxation, regardless of whether that state actually imposes such tax. 50 U.S.C. App. § 574; *see Dameron v. Brodhead*, 345 U.S. 322, 326 (1953) (relief under Section 574 does not require any demonstration that the military person is subject to multiple taxation). Similarly, under Section 561(1), rights to federal lands acquired prior to entering military service are not forfeited during the period of service by reason of the service member's absence or failure to fulfill obligations under mining, mineral leasing, or other laws. 50 U.S.C. App. § 561(1).[14]

Third, one section of the Relief Act, Section 560, juxtaposes a subsection conditioning relief upon a showing of hardship with a subsection providing relief without qualification. Section 560 governs the collection of property taxes on real property "owned and occupied for dwelling, professional, business, or agricultural purposes by a person in the military service or his dependents." 50 U.S.C. App. § 560.[15] Under subsection two, leave of court is required to sell such property to collect unpaid taxes, and

[14]Other sections that do not require a showing of hardship include: 50 U.S.C. App. § 534 (leases covering dwelling, business, professional or agricultural premises may be terminated by person entering military service); *id.* § 561(2) (permittee under federal lands grazing law (43 U.S.C. § 315 *et seq.*) may suspend permit or license during military service and receive reduction or refund of grazing fees); *id.* § 564 (desert-land entries made or held under the desert-land laws (43 U.S.C. § 321 *et seq.*) prior to entering military service may not be contested or canceled for failure to make improvements during the period of military service); *id.* § 565 (requirements for improvements of mining claims suspended during period of military service, and recorded mining claims not subject to forfeiture for nonperformance of annual assessments); *id.* § 566 (holder of mineral permit or lease on federal lands may suspend permit or lease for period equivalent to period of military service).

[15]This provision is inapplicable to this case because Col. Conroy was not occupying the land (J.A. 6, 15).

collection proceedings may be stayed "unless in [the court's] opinion the ability of the person in the military to pay such taxes or assessments is not materially affected by reason of such service." *Id.* § 560(2). In sharp contrast, the very next subsection provides unconditionally that a service member "shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of [military] service." *Id.* § 560(3). The fact that these provisions appear together in the same section of the Relief Act demonstrates conclusively that where Congress intended to impose a hardship requirement, it made that requirement plain.[16]

In sum, the Relief Act reveals that Congress carefully determined throughout the statute whether to impose a prejudice standard (and, if so, on whom to place the burden of proof). Since Congress did not impose such a requirement in Section 525, it is not the proper function of a court to provide one.

C. There Is No Legitimate Reason to Ignore Section 525's Plain Meaning

Notwithstanding Section 525's plain language, the courts below imposed a requirement that Col. Conroy demonstrate hardship (Pet. App. 40, 45). The Superior Court invoked what it characterized as "the cardinal rule of statutory construction that demands that statutes be interpreted to avoid absurd, unreasonable or illogical results" (Pet. App. 36). In so holding, the court ignored the extremely limited scope of this rule of construction and misapplied it to the facts of this case.

[16]Further evidence of Congress' care in drafting the Relief Act is contained in Section 527, which provides that Section 525 "shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States." 50 U.S.C. App. § 527. Section 527 demonstrates that Congress understood the broad protection afforded by Section 525 and knew how to limit the scope of Section 525 when it deemed such limitation necessary.

1. Contrary to the Superior Court's reasoning, a court may not disregard a statute's plain language merely because it questions the wisdom of applying the statute as written. Rather, the court must determine that the plain language leads to "patently absurd consequences," *United States v. Brown*, 333 U.S. at 27, that are "so bizarre that Congress could not have intended" them. *Demarest v. Manspeaker*, 111 S. Ct. 599, 604 (1991) (citation omitted). More specifically, the absurdity "must be so gross as to shock the general moral or common sense." *Crooks v. Harrelson*, 282 U.S. 55, 60 (1930). Furthermore, "[i]t is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation." *Id.* Instead, "there must be something to make plain the intent of Congress that the letter of the statute is not to prevail." *Id.*; *accord, e.g., Griffin*, 458 U.S. at 575 (quoting *Crooks*); *see also International Primate Protection League v. Administrators of Tulane Educational Fund*, 111 S. Ct. 1700, 1708 (1991) (question is whether Congress "could rationally" have chosen to enact the provision as written). Consistent with these principles, this Court has refused to deviate from the plain language of statutes even when the results are "harsh," *Griffin*, 458 U.S. at 576, "curious," *TVA v. Hill*, 437 U.S. 153, 172 (1978), or "stark and troubling," *Estate of Cowart*, 112 S. Ct. at 2598.[17]

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[17]*See, e.g., Griffin*, 458 U.S. at 576 (applying statute awarding double back pay to seaman even though "it is probably true that Congress did not precisely envision the grossness of the difference" between the harm suffered and statutory award); *TVA v. Hill*, 437 U.S. at 172 (Section 7 of Endangered Species Act, 16 U.S.C. § 1536 *et seq.*, required halting dam project because it would threaten "a relatively small number of three-inch fish," despite the fact that the dam was "virtually completed" and had cost taxpayers "more than $100 million"); *Estate of Cowart*, 112 S. Ct. at 2598 (interpreting plain language of statute to foreclose claims for disability payments despite "recogniz[ing] the stark and troubling possibility that significant numbers of injured workers or their families may be stripped of their . . . benefits . . . and that [the statute's] forfeiture penalty creates a trap for the unwary").

Just last Term, this Court in *King v. St. Vincent's Hosp.*, *supra*, faced a situation remarkably similar to this case. The statute at issue was Section 2024(d) of the Veterans' Reemployment Rights Act, 38 U.S.C. § 2021 *et seq.*, which guarantees that reservists who are called to military duty will be given leaves of absence by their employers and will be permitted to return to their jobs with the same seniority and status that they would have had if they had not left. Despite the statute's clear language, St. Vincent's Hospital refused to grant King's request for a three-year leave of absence, advising him that it was "unreasonable and thus beyond the Act's guarantee." *King*, 112 S. Ct. at 572. In ruling on St. Vincent's declaratory judgment action, both the district court and the Eleventh Circuit held for the hospital on the ground that "leave requests for protection under § 2024(d) must be reasonable." *Id.* Significantly, the Eleventh Circuit found that imposing a reasonableness requirement was "necessary to prevent an absurd, unjust, or unintended result." *King v. St. Vincent's Hosp.*, 901 F.2d 1068, 1072 (11th Cir. 1990).

This Court unanimously reversed. The Court first noted that Section 2024(d) "is free of any express conditions upon the provisions in contention . . . ." *King*, 112 S. Ct. at 573. The Court then acknowledged that "congressionally mandated leave of absence can be an ungainly perquisite of military service, when the tour of duty lasts as long as King's promises to do," and that the Court might "reasonably accord some significance to the burdens imposed on both employers and workers" if it "were free to tinker with the statutory scheme." *Id.* But the Court refused to rewrite Section 2024(d), noting that other provisions of the Reemployment Act placed explicit time limits on the period of protection. *Id.* at 573-74. The Court explained that, "[g]iven the examples of affirmative limitations on reemployment benefits conferred by neighboring provisions, we infer that the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service." *Id.* at 574.

As *King* demonstrates, because Section 525 is clear and is not patently absurd on its face, the Court need not – and should not – embark on an inquiry into the policies and legislative history of that section. In any event, as demonstrated below, such an analysis only confirms that the statute must be applied as written.

2. Section 525 is part of a comprehensive scheme designed to protect members of the military by "suspend[ing] enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." 50 U.S.C. App. § 510. *See also* Military Selective Service Act of 1948, 50 U.S.C. App. §§ 451, 464 (extending Relief Act in peacetime; purposes included achieving and maintaining armed forces necessary "to insure the security of this Nation"). Section 525 furthers this objective by, *inter alia*, suspending, during military service, the period for redeeming real property sold for tax delinquencies.

Congress may legitimately have believed that Section 525's bright-line standard was necessary to ensure that military personnel do not lose their property because of a tax deficiency, which may amount to only a tiny fraction of the property's value. Such solicitude is neither unusual nor "patently absurd." Even in peacetime, service members make great personal sacrifices pursuing the defense needs of the nation.[18] Congress has

[18]Military personnel are stationed at 481 military installations throughout the United States, 10 installations in United States territories and possessions, and at 136 installations in foreign countries, for a total of 627 installations worldwide. U.S. Dep't of Defense, *Worldwide List of Military Installations (Major, Minor, and Support) 1990* (Revised July 1991). Service personnel are subject to frequent relocation in their duties. *See* Hammerstrom, *Equitable Distribution of Military Pensions? Re-Thinking the Uniformed Services Former Spouses Protection Act*, 9 Law & Ineq. J. 315, 332 (1991). And even when there is no declared war, military personnel must be constantly vigilant in defense of the nation. United States military personnel have been involved in at least 50 situations of conflict or potential conflict in the 47 years since the close of World War II. *See* Congressional Research Service, *CRS Report for Congress: Instances of Use of United States Armed Forces Abroad, 1798-1989* 14-19 (Dec. 4, 1989); Congressional Research Service, *CRS Issue Brief: War Powers Resolution: Presidential Compliance* 12 (Aug. 6, 1992).

frequently provided generous benefits to military personnel,[19] and this Court has routinely upheld such provisions. *See, e.g., Ridgway v. Ridgway*, 454 U.S. 46, 60 (1981) (federal statute allowing serviceman to designate "any" insurance beneficiary in military insurance policy overrides Maine state law governing divorce decrees). There is simply no basis for rewriting Section 525 to include a prejudice requirement.[20]

The only concern expressed by the Maine Superior Court in finding an absurd result is that military personnel could deliberately withhold real estate taxes, knowing that they could use Section 525 as a defense if the property were sold to satisfy the tax delinquencies (*see* Pet. App. 36-39); *see also King v. Zagorski*, 207 So. 2d 61, 67 (Fla. Dist. Ct. App. 1968) (expressing similar concern); *Bailey v. Barranca*, 488 P.2d 725, 728 (N.M. 1971) (same); *Pannell v. Continental Can Co.*, 554 F.2d 216, 225 (5th Cir. 1977) (same). In fact, however, no evidence has been cited by any court that Section 525 *has* been so

[19]In addition to the Relief Act, other statutory provisions affording benefits to military personnel include: 38 U.S.C. § 2021 *et seq.* (reemployment rights); 20 U.S.C. § 921 (free public education for dependents of military personnel overseas); 37 U.S.C. § 403 (housing allowance); 12 U.S.C. § 1715m (mortgage insurance); 10 U.S.C. § 1071 *et seq.* (medical and dental care for members, certain former members and dependents); *id.* § 1251 *et seq.* (retirement pay); *id.* § 1447 *et seq.* (survivor benefits); *id.* § 1475 *et seq.* (death gratuity).

[20]The fairness of applying Section 525 without imposing a hardship standard is confirmed by the fact that the statute of limitations portion of the section applies, by its terms, both in suits *by* and *against* the service member. *See, e.g., Mason v. Texaco, Inc.*, 862 F.2d 242 (10th Cir. 1988) (action by widow of serviceman); *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975) (action brought against serviceman). Thus, individuals with claims against service members also benefit by Section 525.

abused, notwithstanding the fact that for almost 50 years courts have applied the statute's plain language without adding a prejudice requirement. *See Illinois Nat'l Bank of Springfield v. Gwinn*, 61 N.E.2d 249, 254 (Ill. 1945). Furthermore, it is not unreasonable for Congress to have assumed that military personnel would not deliberately shirk their obligation to pay taxes. *See generally* 88 Cong. Rec. 5551 (1942) (remarks of Rep. Kilday) (recognizing that great majority of military personnel will not abuse Relief Act's protections by deliberately shirking obligations); *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 17 (1955) (noting that "nearly all" military personnel have a "high degree of honesty and sense of justice"). And notwithstanding Section 525, a service member ordinarily would have little practical reason for deliberately withholding his real estate taxes, since the gain from delaying the payment of property taxes under Section 525 would be offset, at least in part, by the fact that interest would continue to accrue on the delinquent taxes. *See* 50 U.S.C. App. § 560(4) (providing that unpaid taxes and assessments shall accrue with interest at a rate not to exceed six percent).

Applying the plain language of Section 525 certainly would not be unreasonable in this case, and the Court should not stretch its imagination to hypothesize possible absurd fact situations. *Cf. Ridgway*, 454 U.S. at 60 n.9 (refusing to "address the legal aspects of extreme fact situations" not presented by the case before it). There is no allegation that Col. Conroy's nonpayment of taxes was a deliberate attempt to abuse the protections of Section 525. Col. Conroy had faithfully paid his real estate taxes for more than a decade. Only upon losing contact with the Town as a result of his relocations did he fail to make payment for 1984-1986. Col. Conroy testified that he received no tax bills for those years, that he had previously notified the Town of his changes in address, and that he wrote to the Town about the matter in 1985 but received no response. Pet. App. 26-27; *see* note 4, *supra*. Nor would allowing Col. Conroy to recover his property upset any longstanding, settled expectations on the part

of respondents Aniskoff and Haynes, Inc., who received mere quitclaim deeds from the Town in December, 1986. *See* note 6, *supra* (quitclaim deed conveys only whatever interest grantor had in the property). The Superior Court's mere speculation that some service member in some future case *might* abuse the privilege provided by Section 525 does not make the statute "patently absurd."

3. The Maine Superior Court, in finding an absurd result, failed to inquire into whether "there [was] something to make plain the intent of Congress that the letter of" Section 525 should not prevail. *Crooks*, 282 U.S. at 60. Had it done so, it would have found no evidence that Congress intended to impose a hardship requirement under Section 525. To the contrary, the scant legislative history that exists is consistent with Section 525's plain language.

To begin with, in 1948 Congress specifically extended the Relief Act as a peacetime statute. Military Selective Service Act, ch. 625, §§ 1, 14, 62 Stat. 604, 623 (1948) (codified at 50 U.S.C. App. §§ 451, 464). This fact rebuts the Superior Court's suggestion (Pet. App. 40) that the Relief Act's protections should generally be available only during wartime or national emergencies.

Moreover, the limited legislative history pertaining to Section 525 (enacted in 1942) provides no valid basis for ignoring the statute's plain meaning. The Conference Report on the 1942 Amendments did not focus on the provision at all, *see* H.R. Rep. No. 2481, 77th Cong., 2d Sess. (1942), and the committee reports on those amendments merely recited the purpose of Section 525 in language identical to the statutory terms, making no reference to a hardship requirement. *See* H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942); S. Rep. No. 1558, 77th Cong., 2d Sess. 4 (1942). It is also notable that both the House and Senate Reports provided that "[a]ny doubts that may arise as to the scope and application of the [Relief Act] should be resolved

in favor of the person in military service involved." H.R. Rep. No. 2198 at 2; S. Rep. No. 1558 at 2. Plainly, Congress did not intend for courts to rewrite the statute and *deprive* service members of statutory benefits.[21]

To be sure, a few members of Congress indicated during the debates that the Relief Act is grounded on a concern for prejudice.[22] Nonetheless, the one explicit reference to Section 525 in the floor debates suggested that the provision was unequivocal. *See* 88 Cong. Rec. 5551 (1942) (colloquy between Reps. Kilday, Springer) ("We provide in this amendment that the period [a serviceman] is in the Army shall not count within the period of redemption so that we place him whole [sic] while he is in the Army.").[23] In any event, reliance on floor debates violates this Court's teaching that where a statute is unambiguous,

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[21]It is also significant that the 1942 addition of a redemption provision was a Congressional response to this Court's decision in *Ebert v. Poston*, 266 U.S. 548 (1925). There, this Court held that a serviceman could not use the 1918 version of Section 525 to toll a redemption period because, *inter alia*, the statute contained no language specifically tolling such periods. *Id.* at 553-54 (noting Congress' "care and particularity" in drafting the statute). It is against the background of this Court's adherence to the letter of the Relief Act that Congress chose legislatively to overrule *Ebert without* adding a prejudice requirement to the section. *See* H.R. Rep. No. 2198 at 4 (citing *Ebert*); S. Rep. No. 1558 at 4 (same).

[22]*See, e.g.*, 88 Cong. Rec. 5368-69 (1942) (Rep. Brooks) (discussing relief from default of obligations due to reduction in income); *id.* at 5363 (Rep. Sparkman) (expressing concern over hardships of military service); *see Bailey*, 488 P.2d at 728-729 (quoting foregoing Brooks and Sparkman remarks).

[23]One court imposing a prejudice requirement under Section 525 relied on "the House Report on the Bill, No. 181." *Bailey*, 488 P.2d at 729. That report does not involve the 1942 Amendments, nor even the 1940 Relief Act. Rather, the report pertained to the Soldiers' and Sailors' Civil Relief Act of *1918* (*see* H.R. Rep. No. 181, 65th Cong., 1st Sess. (1917)), which expired six months after the end of World War I and contained no counterpart to Section 525 relating to redemption of land sold for nonpayment of taxes. *See generally* Act of March 8, 1918, ch. 20, 40 Stat. 440.

it cannot "be expanded or contracted by the statements of individual legislators or committees during the course of the enactment process." *West Virginia University Hospitals, Inc. v. Casey*, 111 S.Ct. 1138, 1147 (1991).

It is also significant that, notwithstanding the fact that numerous courts have applied the plain language of Section 525, Congress has never added a hardship requirement, even though it has amended various parts of the Relief Act – including Section 525 – on numerous occasions since 1942.[24] In short, there is no reliable evidence to suggest that Congress meant anything other than what it clearly said in Section 525.

4. Finally, the difficult issues that would be faced if this Court attempted to rewrite Section 525 confirm that the Court should stay its hand and apply the statute as written. The Maine

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[24]*See* Act of July 3, 1944, ch. 397, § 1, 58 Stat. 722 (expanding protection from state taxation by specifying that only state of domicile could tax service member's personal property); Act of April 3, 1948, ch. 170, § 6, 62 Stat. 160 (directing that refunds of life insurance premium payments made under Relief Act's premium guarantee program be credited against appropriations for claims made); Act of June 23, 1952, ch. 450, 66 Stat. 151 (establishing criminal penalties for foreclosure or seizure of service member's real property without prior court order); Pub. L. No. 85-857, § 14(76), 72 Stat. 1272 (1958) (repealing requirement that Veterans' Administration report annually to Congress on Relief Act's life insurance program); Pub. L. No. 86-721, § 1, 74 Stat. 820 (1960) (regarding proof of military status in default proceedings); Pub. L. No. 87-771, 76 Stat. 768 (1962) (expanding personal property tax exemption for service members stationed outside their state of domicile); Pub. L. No. 89-358, § 10, 80 Stat. 28 (1966) (raising rent eviction ceiling to $150); Pub. L. No. 92-540, tit. V, § 504, 86 Stat. 1098 (1972) (extending indefinitely powers of attorney executed by service members listed as missing in action during Vietnam era); Pub. L. No. 102-12, 105 Stat. 34 (1991) (numerous changes, including raising rent eviction ceiling to $1,200; extending power of attorney protection; adding professional liability protection; adding health insurance reinstatement rights; clarifying re-employment rights); Pub. L. No. 102-12, § 9(6), 105 Stat. 39 (1991) (substituting "Oct. 6, 1942" for "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942").

Superior Court found that Col. Conroy was a "career military serviceman" (Pet. App. 40) and thus could not establish hardship. But this reasoning makes no sense, since "[t]oday's military forces are purely volunteer services." *McCance*, 492 A.2d at 1355. The Superior Court also stated that Col. Conroy had presented no evidence of hardship (Pet. App. 40), but the court gave no indication of what sort of showing would be required. Indeed, the court provided no justification for placing the burden of proving hardship on the military person, as opposed to creating a rebuttable presumption of hardship. *See* pages 12-13 & nn. 11, 12 (noting apparently different prejudice burdens under various sections of the Relief Act); *cf. Boone v. Lightner*, 319 U.S. 561 (1943) (holding that trial court had discretion to allocate burden of proof under Section 201 of Relief Act, 50 U.S.C. App. § 521). If this Court were to affirm the decision below, the courts would then be faced with deciding how to formulate the prejudice standard and where to place the burden of proof.

Furthermore, by adding a hardship requirement in Section 525, the Court would invite future litigation over other unambiguous terms of the Relief Act. Courts would be faced with the question of whether to impose a prejudice requirement in numerous other sections of the statute that do not by their terms contain such a requirement. *See* pages 13-14 & n. 14, *supra*. Those courts would have to decide whether to adhere to the statutory language or to rewrite the language on policy grounds.

Most fundamentally, by affirming the decisions below, this Court would send the message to lower courts -- contrary to the Court's carefully developed jurisprudence -- that the plain meaning rule has no substance and that courts are now free to rewrite statutes at will. If Section 525 is to be rewritten, that task should be performed by Congress, not the courts.

CONCLUSION

For the foregoing reasons, the decision of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted,

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